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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/684,312 | 10/10/2003 | Donna Gail Schneider | DGS001 | 3321 |

7590 06/08/2010
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| EXAMINER |
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GRAVINI, STEPHEN MICHAEL

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| ART UNIT | PAPER NUMBER |
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3743

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| MAIL DATE | DELIVERY MODE |
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06/08/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|---------------------------------------|--|--|
| Office Action Summary | Application No. 10/684,312 | Applicant(s) SCHNEIDER, DONNA GAIL | |
| | Examiner Stephen M. Gravini | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The recitation of a side designation having “user selectable variable construction” is not enabled by the specification to those skilled in the art. That recitation has no basis in the specification as to how a user would select a variable construction. Specification paragraph 25 discusses variable configuration side panels, but not a user selectable feature. Paragraphs 31 and 37 specify that a side may be selectively enclosed, left open, or variable but nothing enabling one skilled in the art a user selection. Finally specification paragraph discusses different ways to form a grill, but not the claimed user selectable variable construction. Nothing in the originally filed application would reasonably convey that the invention had possession of this claimed feature.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claimed “user selectable variable configuration” is indefinite because it is not clear how a user would select a variable construction.

Claim Rejections - 35 USC § 102

Claims 17-22 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Smith (US 4,619,190). The indefinite recited "user selectable variable construction" feature is treated under the assumption that it was reasonable that the inventor had possession of the claimed invention and that one skilled in the art would be able to make or use the invention. The claims are reasonably and broadly construed, in light of the accompanying specification, to be disclosed by Smith since each claimed feature is shown on the face of that reference.

Claim Rejections - 35 USC § 103

Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Gilbert (5,713,344). Smith discloses the claimed invention, except for the claimed substantially enclosed first proportion or panel supported height transverse member or first quantity of panels available for constructing a first value, along with a variable attribute. Gilbert discloses these features at column 2 lined 30-63 and at column 3 lines 1-11 and shown in figures 1, 5, and 7. It would have been obvious to one skilled in the art to combine the teachings of Smith with the substantially enclosed first proportion or panel supported height transverse member or first quantity of panels available for constructing a first value, along with a variable attribute of Gilbert for the purpose of providing a light, foldable food cooker that will move from an expanded position to a collapsed position which can be used as a barbeque, stove, oven and smoker, and still fit into a confined area which can be very desirable. Other advantages include a folding center section assembly made up of side walls, back walls, front doors

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and support plates pivotally mounted to fold out quickly, with a cover on top, a firebox to provide both a spark and ashtray which is easily inserted in the expanded device, with food racks, water tray and fire box, it is further advantageous to have a device that can be assembled and disassembled in minutes.

Response to Arguments

Applicant's arguments filed March 15, 2010 have been fully considered but they are moot-in-part based on the new grounds of rejection.

Enablement/ Indefiniteness

Applicant asserts that because the originally filed application on October 10, 2003 gives basis for overcoming the non-enabling and indefinite rejections. Arguments that the user-selectable aspect of the design is clearly evident and self-contained in the present application are not persuasive. As examiner's immediate supervisor can readily verify, nothing is "clearly evident and self-contained." If it is not in the claim, it isn't going to be allowable. The current application must claim features to distinguish it over the prior art. Incorporation by reference will only matter if the claim brings in the incorporated matter. Furthermore, with respect to the "user selectable" feature, applicant argues that this should be implicit from the originally filed application. The originally filed application discusses "adaptability for use" at specification paragraph [0006], "many possible embodiments, the frame may be assembled in free space. In other words, many embodiments are possible wherein one may assemble the frame as it is held in one's hands" [0016], "sides of the assembled frame 100 may be similarly construed" [0025], "user desires to rearrange fuel" [0029], and "possible relationships

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among the dimensions of various components to optimize both the assembled and stowed configurations of the unit' [0050]. Nothing in the drawings support this "user selectable" claim feature. Each of these specification features support claimed different embodiments or configurations, but none are selectable by a user, as now claimed. It would be a stretch to import the claimed "user selectable" feature from the originally filed into the claims, since the specification and drawings, as originally filed do not support this claimed feature.

Applicant looks to the prior art to argue patentability, but that reference is not used in rejecting the claims. Furthermore, the feature of "user selectability" is patentably distinct from the argued "configuration being selected by a user of the device" because in the former step a user must actively select while the latter, the configuration merely supports being capable of or adapted to a user selection. This is a big difference as far as determining patentability.

Examiner has construed each of applicant's cited specification support for user selectable feature, but finds no support as originally filed. In fact no where in the originally filed application is found the now claimed "user selectable variable construction" feature, because no where in the specification are the recitations "user" and "selectable" linked.

Conclusion

Other prior art references cited with this action can be used to reject the claims, but are not used in this action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen M. Gravini/
Primary Examiner, Art Unit 3743